IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 21617 of 2007(W)

PETITIONER:

ALAMPALLY BROTHERS LIMITED,
MANALIMUKKU, KUZHIKKATUKARA, ALUVA, ERNAKULAM DIST
PIN-683 563, REPRESENTED BY ITS DIRECTOR,
MR.M.B.KOYAKUTTY.

BY ADV. SRI.SHAJI CHIRAYATH
SMT.JIJI M. VARKEY

RESPONDENTS:

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1. EMPLOYEES PROVIDENT FUND ORGANISATION,
BHAVISHYANIDHI BHAVAN, 14, BHIKIJI CAMPA PLACE,
NEW DELHI, PIN-110 066, REPRESENTED BY ITS
CHIEF PROVIDENT FUND COMMISSIONER.

2. ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
BHAVISHYANIDHI BHAVAN, KALOOR, ERNAKULAM DISTRICT,
PIN-682 017.

3. RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
BHAVISHYANIDHI BHAVAN, KALOOR, ERNAKULAM DISTRICT,
PIN-682 017.

4. CENTRAL BOARD OF TRUSTEES,
EMPLOYEES PROVIDENT FUND, BHAVISHYANIDHI BHAVAN,
4, BHIKIJI CAMPA PLACE, NEW DELHI, PIN-110 066,
REPRESENTED BY ITS CHAIRMAN.

5. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF LABOUR
AND EMPLOYMENT, MAIN SECRETARIAT, SOCIAL SECURITY
DIVISION, NEW DELHI.

BY ADV. SRI.S.GOPAKUMARAN NAIR, SC, P.F.
SRI. PARAMESWARAN NAIR ASST.SOL.GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)NO.21617 OF 2007

DATED THIS THE 3rd DAY OF AUGUST, 2007

JUDGMENT

The petitioner is a sick Company, which is finding it very difficult to survive. Proceedings have been initiated against the Company for recovery of contributions under the Employees Provident Funds and Miscellaneous Provisions Act. Orders under Sections 14B and 7Q of the Act have been passed, against which the petitioner has filed appeal before the Tribunal. Earlier the petitioner approached this Court by filing W.P.(C)No.8435/07and W.P.(c)No.17304/07. Order were passed thereon dismissing W.P.(c)No.8435/07 in respect of interest under Section 7Q and leaving it open to the petitioner to pursue his remedies before the Tribunal in the appeal stated to have been filed in respect of damages under Section 14B.

2. In the present Writ petition, the contention of the petitioner is that since the petitioner has been registered as a sick unit by the District Industries Centre, Ernakulam evidence by Ext.P2, the petitioner is entitled to benefits of the 2nd proviso to Section 14B for which purpose the petitioner has filed Ext.P11 application before the 4th respondent Central Board of Trustees of the Employees' Provident

Fund. The petitioner's contention is that since the Tribunal does not have power to waive damages and such power has been specifically conferred on the 4th respondent, the 4th respondent may be directed to consider Ext.P11.

3. I have considered the contentions of the petitioner. Section 14B reads as under.

> "[3] [14B.Power to recover damages.- Where an employer makes default in the payment of any contribution to the Fund [1][,the [2][Pension]Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [4] [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of [5] [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [6] [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover [7][from the employer such damages, not exceeding [8] [***]the amount of arrears, as it may thinks fit to impose:]
>
> [9][Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:
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> [10][Provided further that the Central Board may reduce or waive the damages levied under this Section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.]"
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> (emphasis supplied)

What is contemplated under the 2nd proviso to Section 14B is firstly a registration as a sick Company with the Board of Industrial and Financial Reconstruction and secondly, sanctioning of a scheme for

rehabilitation by the BIFR.

4. Admittedly, in this case, the petitioner has only been registered as a sick unit by the District Industries Centre, as per Ext.P2. There is no registration with the BIFR, much less sanction of a scheme for rehabilitation of the Company by the BIFR. Since the petitioner is claiming the benefits of the proviso, it is for the petitioner to satisfy this Court that the petitioner comes squarely within the four corners of the said proviso. Admittedly, the petitioner has not been registered with the BIFR and the BIFR has not sanctioned any scheme and therefore clearly the petitioner is not entitled to the benefits of the said proviso. That being so, there is no merit in the writ petition and accordingly, the same is dismissed. However, this shall not prejudice to the right of the petitioner in the appeal pending before the Tribunal.

S. SIRI JAGAN, JUDGE

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